

§ 404.1926

(b) Benefits under an agreement may not be paid on the basis of an application filed before the effective date of the agreement.

§ 404.1926 Evidence.

(a) An applicant for benefits under an agreement shall submit the evidence needed to establish entitlement, as provided in subpart H of this part. Special evidence requirements for disability benefits are in subpart P of this part.

(b) Evidence submitted to the competent authority or agency of a country with which the U.S. has concluded an agreement shall be considered as evidence submitted to SSA. SSA shall use the rules in §§ 404.708 and 404.709 to determine if the evidence submitted is sufficient, or if additional evidence is needed to prove initial or continuing entitlement to benefits.

(c) If an application is filed for disability benefits, SSA shall consider medical evidence submitted to a competent authority or agency, as described in paragraph (b) of this section, and use the rules of subpart P of this part for making a disability determination.

§ 404.1927 Appeals.

(a) A request for reconsideration, hearing, or Appeals Council review of a determination that is filed with the competent authority or agency of a country with which the U.S. has concluded an agreement, shall be considered to have been timely filed with SSA if it is filed within the 60-day time period provided in §§ 404.911, 404.918, and 404.946.

(b) A request for reconsideration, hearing, or Appeals Council review of a determination made by SSA resulting from a claim filed under an agreement shall be subject to the provisions in subpart J of this part. The rules governing administrative finality in subpart J of this part shall also apply.

§ 404.1928 Effect of the alien non-payment provision.

An agreement may provide that a person entitled to benefits under title II of the Social Security Act may receive those benefits while residing in the foreign country party to the agree-

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ment, regardless of the alien non-payment provision (see § 404.460).

§ 404.1929 Overpayments.

An agreement may not authorize the adjustment of title II benefits to recover an overpayment made under the social security system of a foreign country (see § 404.501). Where an overpayment is made under the U.S. system, the provisions in subpart F of this part will apply.

§ 404.1930 Disclosure of information.

The use of information furnished under an agreement generally shall be governed by the national statutes on confidentiality and disclosure of information of the country that has been furnished the information. (The U.S. will be governed by pertinent provisions of the Social Security Act, the Freedom of Information Act, the Privacy Act, the Tax Reform Act, and other related statutes.) In negotiating an agreement, consideration should be given to the compatibility of the other country's laws on confidentiality and disclosure to those of the U.S. To the extent possible, information exchanged between the U.S. and the foreign country should be used exclusively for purposes of implementing the agreement and the laws to which the agreement pertains.

Subpart U—Representative Payment

AUTHORITY: Secs. 205(a), (j), and (k), and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), (j), and (k), and 902(a)(5)).

SOURCE: 47 FR 30472, July 14, 1982, unless otherwise noted.

§ 404.2001 Introduction.

(a) *Explanation of representative payment.* This subpart explains the principles and procedures that we follow in determining whether to make representative payment and in selecting a representative payee. It also explains the responsibilities that a representative payee has concerning the use of the funds he or she receives on behalf of a beneficiary. A representative payee may be either a person or an organization selected by us to receive

benefits on behalf of a beneficiary. A representative payee will be selected if we believe that the interest of a beneficiary will be served by representative payment rather than direct payment of benefits. Generally, we appoint a representative payee if we have determined that the beneficiary is not able to manage or direct the management of benefit payments in his or her interest.

(b) *Policy used to determine whether to make representative payment.* (1) Our policy is that every beneficiary has the right to manage his or her own benefits. However, some beneficiaries due to a mental or physical condition or due to their youth may be unable to do so. Under these circumstances, we may determine that the interests of the beneficiary would be better served if we certified benefit payments to another person as a representative payee.

(2) If we determine that representative payment is in the interest of a beneficiary, we will appoint a representative payee. We may appoint a representative payee even if the beneficiary is a legally competent individual. If the beneficiary is a legally incompetent individual, we may appoint the legal guardian or some other person as a representative payee.

(3) If payment is being made directly to a beneficiary and a question arises concerning his or her ability to manage or direct the management of benefit payments, we will, if the beneficiary is 18 years old or older and has not been adjudged legally incompetent, continue to pay the beneficiary until we make a determination about his or her ability to manage or direct the management of benefit payments and the selection of a representative payee.

§ 404.2010 When payment will be made to a representative payee.

(a) We pay benefits to a representative payee on behalf of a beneficiary 18 years old or older when it appears to us that this method of payment will be in the interest of the beneficiary. We do this if we have information that the beneficiary is—

(1) Legally incompetent or mentally incapable of managing benefit payments; or

(2) Physically incapable of managing or directing the management of his or her benefit payments.

(b) Generally, if a beneficiary is under age 18, we will pay benefits to a representative payee. However, in certain situations, we will make direct payments to a beneficiary under age 18 who shows the ability to manage the benefits. For example, we make direct payments to a beneficiary under age 18 if the beneficiary is—

(1) Receiving disability insurance benefits on his or her own Social Security earnings record; or

(2) Serving in the military services; or

(3) Living alone and supporting himself or herself; or

(4) A parent and files for himself or herself and/or his or her child and he or she has experience in handling his or her own finances; or

(5) Capable of using the benefits to provide for his or her current needs and no qualified payee is available; or

(6) Within 7 months of attaining age 18 and is initially filing an application for benefits.

[47 FR 30472, July 14, 1982, as amended at 54 FR 35483, Aug. 28, 1989]

§ 404.2011 What happens to your monthly benefits while we are finding a suitable representative payee for you?

(a) *We may pay you directly.* We will pay current monthly benefits directly to you while finding a suitable representative payee unless we determine that paying you directly would cause substantial harm to you. We determine substantial harm as follows:

(1) If you are receiving disability payments and we have determined that you have a drug addiction or alcoholism condition, or you are legally incompetent, or you are under age 15, we will presume that substantial harm exists. However, we will allow you to rebut this presumption by presenting evidence that direct payment would not cause you substantial harm.

(2) If you do not fit any of these categories, we make findings of substantial harm on a case-by-case basis. We consider all matters that may affect your ability to manage your benefits in your own best interest. We decide that